

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1065 Expunction of Criminal History Records

**SPONSOR(S):** Eagle

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1142

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Bruno	Sumner
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Expunction of a criminal history record requires all criminal justice agencies possessing such a record to physically destroy or obliterate it. Once the record is expunged, a person may lawfully deny or fail to acknowledge an arrest covered by the expunged record, subject to some exceptions.

A court, in its sole discretion, may order a criminal justice agency to expunge a person's criminal history record if the Florida Department of Law Enforcement (FDLE) issues the person a valid certificate of eligibility for expunction. FDLE must issue this certificate to a person meeting all eligibility criteria, including that:

- The person has never had a record sealed or expunged previously;
- The person has never been adjudicated guilty as an adult for any offense or adjudicated delinquent as a juvenile for certain enumerated offenses;
- The person was not adjudicated guilty or delinquent for any acts stemming from the same arrest which the person seeks to expunge; and
- The case he or she seeks to have expunged:
  - Was dismissed by a no action, *nolle prosequi*, or court dismissal;
  - Does not relate to one of several enumerated offenses, which generally include violent and sexual crimes; and
  - Did not result in a trial, regardless of the outcome of the trial.

The statute prohibits expunction if the person was acquitted at trial. Consequently, a person who exercises his or her right to a trial is barred from the possibility of expunction. In contrast, a person whose case was dismissed for reasons including uncooperative witnesses, lack of evidence, or participation in a diversion program is eligible for expunction, if he or she meets all other criteria.

HB 1065 expands eligibility for court-ordered expunction to include a person who received a not guilty verdict, whether by judge or jury.

The bill may have an indeterminate fiscal impact on state government but no impact on local government.

The bill provides an effective date of October 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

A criminal history record includes any nonjudicial record maintained by a criminal justice agency<sup>1</sup> that contains criminal history information.<sup>2</sup> Criminal history information is information collected by criminal justice agencies consisting of identifiable descriptions of individuals and notations of arrests, detentions, indictments, informations, other formal criminal charges, and criminal dispositions.<sup>3</sup>

A person may have his or her criminal history record expunged under certain circumstances.<sup>4</sup> When a record is expunged, the criminal justice agencies possessing such record must physically destroy or obliterate it.<sup>5</sup> The Florida Department of Law Enforcement (FDLE) maintains a copy of the record in order to evaluate subsequent requests for sealing or expunction, and to recreate the record in the event a court vacates the order to expunge.<sup>6</sup> Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to some exceptions.<sup>7</sup>

Court-ordered expunction is one type of expunction authorized by Florida law.<sup>8</sup> A court, in its sole discretion, may order a criminal justice agency to expunge a person's criminal history record if FDLE issues the person a valid certificate of eligibility for expunction.<sup>9</sup>

FDLE must issue a certificate of eligibility for court-ordered expunction to a person meeting all criteria.<sup>10</sup> Generally, a person is eligible for expunction if:

- The person has never had a record sealed or expunged previously;<sup>11</sup>
- The person has never been adjudicated guilty as an adult for any offense or adjudicated delinquent as a juvenile for certain enumerated offenses;<sup>12</sup> and
- If the case he or she seeks to have expunged:
  - Was dismissed by a no action,<sup>13</sup> *nolle prosequi*,<sup>14</sup> or court dismissal;<sup>15</sup>
  - Does not relate to one of several enumerated offenses, which generally include violent and sexual crimes;<sup>16</sup> and
  - Did not result in a trial, regardless of the outcome of the trial.<sup>17</sup>

<sup>1</sup> Criminal justice agencies include the court, the Department of Law Enforcement (FDLE), the Department of Juvenile Justice (DJJ), components of the Department of Children and Families (DCF), and other governmental agencies that administrate criminal justice. S. 943.045(11), F.S.

<sup>2</sup> S. 943.045(6), F.S.

<sup>3</sup> S. 943.045(5), F.S.

<sup>4</sup> SS. 943.0581, 943.0582, 943.0583, & 9.0585, F.S.

<sup>5</sup> S. 943.045(16), F.S.

<sup>6</sup> Id.

<sup>7</sup> S. 943.0585(4), F.S.

<sup>8</sup> S. 943.0585, F.S.; other types of expunction include lawful self-defense expunction, S. 943.0585(5), F.S.; administrative expunction, S. 943.0581, F.S.; prearrest, postarrest, or teen court diversion, S. 943.0582, F.S.; human trafficking victim expunction, S. 943.0583, F.S.; and automatic juvenile expunction, S. 943.0515, F.S.

<sup>9</sup> S. 943.0585(1), F.S.

<sup>10</sup> S. 943.0585(2), F.S.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> A no action is the dismissal of the pending charges before an information or indictment has been filed. *Genden v. Fuller*, 648 So.2d 1183, 1183 n. 1 (Fla. 1994).

<sup>14</sup> A *nolle prosequi* is the dismissal of a pending information or indictment. Id.

<sup>15</sup> The court may dismiss a case under certain circumstances, including on a defense motion to dismiss under Rule 3.90(c)(4), Fla. R. Crim. P., upon expiration of the speedy trial period under Rule 3.191, Fla. R. Crim. P., or upon granting Stand Your Ground immunity under s. 776.032, F.S.

<sup>16</sup> S. 943.0585(2)(a)3., F.S.

The statute prohibits expunction if the person was acquitted at trial, whether by a judge or the jury. Consequently, a person who exercises his or her right to a trial is barred from the possibility of expunction. In contrast, a person whose case was dismissed for reasons including uncooperative witnesses, lack of evidence, or participation in a diversion program is eligible for expunction, if he or she meets all other criteria.

### **Effect of Proposed Changes**

HB 1065 expands eligibility for court-ordered expunction to include a person who received a not guilty verdict, whether by judge or jury.

The bill provides an effective date of October 1, 2018.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

**Section 2:** Provides an effective date of October 1, 2018.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

The bill may have an indeterminate fiscal impact on state government, as it expands the pool of people eligible for expunction of their criminal records. This may result in increased applications for expunction.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

#### **D. FISCAL COMMENTS:**

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. The bill does not appear to affect municipal or county governments.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

FDLE has sufficient rule-making authority to implement the requirements of this bill.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**